



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC**

141773

Issued by the Department of Transportation October 19, 2001

NOTICE OF ACTION TAKEN -- DOCKET OST-2000-7513-55

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Application of **Gemini Air Cargo, Inc.** filed **10/3/01** for:

XX Exemption from Order 2000-10-19; startup deadline:

By Order 2000-10-19, the Department granted Gemini Air Cargo, Inc. (a) an exemption to engage in scheduled foreign air transportation of property and mail between Miami, Florida, on the one hand, and Quito and Guayaquil, Ecuador, on the other, (b) an exemption to integrate such authority with Gemini's existing certificate and exemption authority, and (c) an allocation of three weekly frequencies (narrow-body aircraft or wide-body equivalent) for services in the United States-Ecuador market. Gemini's frequency award was subject to a 90-day startup condition as well as our standard 90-day dormancy condition. Under the award, Gemini was required to begin service before January 21, 2001. Gemini has sought various extensions of the startup condition, stating that it had yet to receive an operating license from the Ecuadorian authorities. The latest extension is through October 19, 2001.¹ In the instant request Gemini seeks an extension through November 19, 2001.

In support of its request, Gemini states that it understands that the Government of Ecuador will issue the authority by October 19, 2001; however, it seeks the limited extension in the event that the Ecuador Government does not in fact grant the authority by that date or grants the authority on a date that does not allow Gemini sufficient time to commence scheduled service by October 19, 2001. Gemini states that it believes that it has fulfilled all of the licensing requirements of the Government of Ecuador except for the submission of an authenticated copy of the minimum equipment list (MEL) for its MD-11 aircraft.

On October 10, 2001, Atlas Air, Inc. filed an answer opposing Gemini's latest request. Atlas maintains that the filing of the MEL should not require anything close to the 30-day extension being sought; that the frequency assignments in limited-entry markets are valuable bilateral rights and that it is time for the Department to hold Gemini accountable for starting service within the generous time frame provided to date. Atlas also notes that in Gemini's first interim report the carrier advised the Department that it expected to meet another Ecuador licensing requirement—the establishment of a corporate entity in Ecuador by October 12, 2001, that Gemini had not subsequently changed that estimate, and that Atlas could only assume the requirement had been satisfied, or if not, is not an impediment to prompt completion of the licensing process.

On October 18, 2001, Gemini filed a reply, stating that it is continuing its efforts to obtain scheduled all-cargo authority from the Government of Ecuador, that Gemini believes it has fulfilled all requirements, including the submission of the MEL on or about October 10, and has satisfactorily fulfilled the corporate

¹ See Notices of Action Taken, dated January 19, 2001, April 23, 2001, July 20, 2001, August 23, 2001, and September 6, 2001, in the present docket, for the history of Gemini's requests for extension of the startup condition. In the September 6 action granting Gemini a further extension through October 19, the Department required that Gemini submit on a weekly basis, specific information of precisely what steps Gemini had undertaken to meet the requirements of the Ecuador government in order to receive an Ecuadorian license.

entity requirement. Gemini also states that its most recent inquiries regarding its Ecuador license through its representative in Ecuador and through the U.S. Embassy in Ecuador, indicate that Gemini's application is awaiting final action by the Directorate of Civil Aviation (DAC). Therefore, Gemini contends that the delay in introducing service is outside Gemini's control, and it seeks an extension in the startup deadline through November 19, 2001, to avoid the need to make applications for extensions of shorter duration in the event the Government of Ecuador does not grant Gemini the requested scheduled authority in the immediate future.

Applicant rep.: Moffett B. Roller (202) 331-3300 DOT analyst: Linda Senese (202) 366-2367

DISPOSITION

XX Granted, in part, subject to conditions (see remarks below)

XX Balance deferred.

The above action was effective when taken: October 19, 2001, through November 2, 2001

XX Action taken by: **Paul L. Gretch, Director**
Office of International Aviation

Remarks: We have decided to grant, in part, Gemini's request for an extension of the startup deadline. Gemini has complied with our requirement that it provide a weekly report of its progress in obtaining its Ecuador license. These reports, coupled with Gemini's submissions in connection with the present application, support a finding that the carrier is continuing its good faith effort to secure the necessary license from Ecuador and that the license should be issued in the near future. In these circumstances, we believe that extension of the startup deadline is warranted. We are not persuaded, however, that extension for the full 30 days requested is warranted at this time, given the progress Gemini has made in securing its license and the carrier's own assertions that award of the license appears imminent and that it expects not to need a 30-day extension. Therefore, we have extended the startup deadline for two weeks and defer action on the balance of the request. We expect that upon the issuance of the Ecuador license, Gemini will immediately start its scheduled service.² We expect Gemini to continue to report to the Department on a weekly basis on its progress.

Under the authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; and (2) grant of the exemption was consistent with the public interest. To the extent not granted or deferred, we denied all requests in the referenced Docket. We may amend, modify, or revoke the action taken in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp*

² As we have previously noted (Notice of Action Taken September 6, 2001), Gemini's authority to serve Ecuador is for the operation of scheduled flights and the frequencies allocated for operation of scheduled service are subject to a dormancy condition whereby failure to operate any frequency for a period of 90 days will result in such frequency reverting automatically to the Department for reallocation. The operation of charter flights does not negate the dormancy provision nor does it satisfy the startup condition for scheduled service. Nonetheless, we believe that since Gemini has operated such charters recently, it is well-positioned to begin scheduled services immediately upon receipt of the Ecuador license.